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### **REMARKS**

Claims 1 through 6 and new Claims 7 through 10 are pending in the application.

Claim 1 has been amended to emphasize that the inventive mixtures advantageously include a single high intensity sweetener, which is acesulfame K. Support for this amendment can be found in the Application-as-filed, for example on Page 5, lines 12 through 27.

Claim 1 has been further amended to correct a typographical error.

Claims 2 through 6 have been canceled to address an inconsistency in numbering. In particular, Claim 2 was apparently missing from the Application-as-filed.

Consequently, Claims 7 through 10 have been added to provide consecutively numbered claims in conformance with United States practice. Support for Claims 7 through 10 can be found in the Application-as-filed, for example in Claims 3 through 6 as-originally-filed.

Reexamination and reconsideration of this application, withdrawal of all rejections, and formal notification of the allowability of the pending claims are earnestly solicited in light of the remarks which follow.

### **The Cited Co-Pending Applications**

### **Are Not Conflicting**

Claims 1 through 6 stand rejected as conflicting with the claims of Application Nos. 10/637,283 (APP 283); 10/638,721 (APP 721) and 11/035,590 (APP 590). Applicants respectfully traverse this rejection.

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The present invention is directed to HFCS 42-based sweeteners that are more economical than HFCS 55, yet provide a comparable taste profile. The claimed sweeteners include a mixture of HFCS 42 and from 0.015 to 0.035 wt % of acesulfame K alone.

In contrast to the instant invention, APP 283, APP 721 and APP 590 are each directed to reduced-calorie sweetener compositions.

The sweetener compositions of APP 283 include both HFCS 55 and sucrose as suitable carbohydrate sweeteners along with a binary high intensity sweetener blend that may include either aspartame or sucralose. The binary high intensity sweetener blend may be present in amounts as low as 0.002 wt%. As noted above, the present invention recites the presence of HFCS 42 and a minimum of 0.015 wt % of acesulfame K alone. Consequently, the range of suitable carbohydrate sweeteners, the recited amounts of high intensity sweetener and the high intensity sweetener composition of APP 283 are altogether different from the claimed invention.

The claims of APP 721 are directed to mixtures with a sweetness profile of pure sucrose. The sweetener compositions of APP 721 include HFCS 55 as a suitable carbohydrate sweetener, along with a minimum of 0.09 wt.% of a binary high intensity sweetener blend that may include either aspartame or sucralose. In contrast, the present invention is directed to the use of HFCS 42 and a maximum of 0.035 wt % of acesulfame K alone to form sweetener compositions having a taste profile comparable to HFCS 55. Thus the recited range of acceptable carbohydrate sweeteners, the amount of high intensity sweetener, the high intensity sweetener composition and resulting taste profile of APP 721 are altogether different from the claimed invention.

The sweetener compositions of APP 590 include even more complex high intensity sweetener mixtures than APP 283 and APP 721. The sweetener compositions of APP 590 include up to 3.8 wt % of a ternary high intensity sweetener composition that includes both aspartame and sucralose. APP 590 also notes HFCS 55 and sucrose as suitable carbohydrate sweeteners. As noted above, the present invention is directed to the use of HFCS 42 and a

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maximum of 0.035 wt % of acesulfame K alone. Thus the recited range of acceptable carbohydrate sweeteners, the amount of high intensity sweetener and the high intensity sweetener composition are altogether different from the claimed invention.

Applicants further respectfully make of record that specific combinations of different sweeteners have very different taste characteristics. Consequently, the taste profile provided by any particular combination of sweeteners can not be predetermined by a person skilled in the art.

Accordingly, Applicants submit that the claims of the above-referenced invention are not in conflict with the claims of APP 283, APP 721 and APP 590. Applicants thus respectfully request withdrawal of this rejection.

*The Claimed Invention is Patentable  
in Light of the Art of Record*

Claims 1 through 6 stand rejected over Simon et al in view of United States Patent No. 6,294,214 to Calderas et al (US 214).

HFCSs are common liquid sweeteners formed from isomerized corn syrups. HFCSs are typically available as either HFCS 42, containing 42 % fructose, or HFCS 55, containing 55 % fructose. The taste profiles of these two HFCSs differ from each other. HFCS 42 is more economical in comparison to HFCS 55. However, amongst HFCSs, it is well accepted that the taste quality, i.e. the sweetness level, of HFCS 55 is superior to HFCS 42. Consequently, HFCS 55 is regarded as a sweetness standard in certain regions and product categories.

Quite surprisingly, Applicants have discovered HFCS 42-based sweetener mixtures providing a taste profile comparable to HFCS 55. The recited sweetener composition include HFCS 42 and from 0.015 to 0.035 wt % (based on the weight of the HFCS42) of acesulfame K.

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None of the cited references teaches or suggests the claimed invention.

Simon is generally directed to reduced-calorie soft drinks. Simon broadly discloses the combination of intense sweeteners with simple sugars. (Pg. 331 and Pg. 332 at Figure 10). Simon goes on to provide a table, Figure 11, disclosing "the most suitable combinations with respect to taste quality." (Page 332). Simon does not, however, note that the combinations have a taste comparable to HFCS 55.

Simon indicates in Figure 11 that HFCS 42 maybe be combined with a binary mixture of aspartame and cyclamate. Simon's Figure 11 also evidences that individual components within a sweetener mixture have an unpredictable effect upon the resulting taste.

Simon ultimately recommends a combination of 3 % glucose syrup and various binary blends of high intensity sweeteners. Simon merely generically notes that his preferred samples, the glucose syrup samples, provide a "sugary type flavour." (Page 332).

Accordingly, Simon does not teach or suggest the recited mixtures having a taste profile comparable to HFCS 55.

Nor does Simon teach or suggest such mixtures including HFCS 42 and acesulfame K alone. Simon instead teaches away from the recited composition by expressly recommending a binary blend of two altogether different high intensity sweeteners in combination with HFCS 42, i.e. a binary blend of aspartame and cyclamate.

As Simon does not teach or suggest the recited combination of HFCS 42 and acesulfame K, he most certainly does not teach or suggest the recited mixtures including from 0.015 to 0.035 wt.% of acesulfame K.

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Consequently, Applicants respectfully submit that the claimed invention is patentable in light of Simon, considered either alone or in combination with US 214.

US 214 is directed to improving the microbial stability of a non-carbonated beverages. (Col. 1, lines 10 – 12). The “essential elements” of US 214 include a preservative, a polyphosphate, and a given water hardness. (Col. 3, lines 1 - 28). US 214 merely generically notes that its beverages can contain any of a laundry list of artificial or natural sweeteners. (Col. 8, lines 22 – 64). The working examples of US 214 indicate the use of HFCS 55 alone. (Col. 10, line 63 – Col. 11, line 21). US 214, concerned solely with microbial stability, is altogether silent as to the taste profile of the resulting beverages.

US 214 does not teach or suggest the recited mixtures having a taste profile comparable to HFCS 55.

Nor does US 214 teach or suggest the recited mixtures including HFCS 42 and acesulfame K alone.

As US 214 does not teach or suggest the combination of HFCS 42 and acesulfame K, it most certainly does not teach or suggest the recited mixtures including from 0.015 to 0.035 wt.% of acesulfame K.

Consequently, Applicant respectfully submits that the claimed invention is patentable in light of US 214, considered either alone or in combination with Simon.

There would have been no motivation to have combined these references. Merely because the references can be combined is not enough, there must still be a suggestion. MPEP 2143.01 (section citing Mills). Applicant respectfully submits that the Office Action is instead indulging in impermissible hindsight by merely picking and choosing elements from the prior art while using the instant specification as the guide for that selection process.

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Simon is broadly directed to reduced-calorie soft drinks that include a binary blend of aspartame and cyclamate in combination with HFCS 42. US 214 addresses the microbial stability of beverages using a combination of preservatives, polyphosphate and water of specified hardness. These are altogether different problems solved, to say the least.

However, even if one were to combine the cited references (which Applicants did not), the claimed invention would not result.

In particular, the combination would not result in the recited HFCS 42-based sweetener compositions imparting a taste profile of HFCS 55 that are formed from a combination of HFCS 42 and acesulfame K alone. As noted above, Simon teaches away from the recited combination by instead recommending a binary blend of aspartame and cyclamate with HFCS 42. US 214 makes no mention of specific sweetener compositions.

Thus the combination most certainly would not result in the claimed mixtures including HFCS 42 and from 0.015 to 0.035 wt.% of acesulfame K alone.

In contrast to the opinion urged within the outstanding Office Action, significant inventive work was required to achieve more economical, HFCS 42-based beverages with a taste profile that is comparable to HFCS 55. Such work is beyond pure optimization of a defined set of components. As noted above, specific combinations of different sweeteners have very different taste characteristics.

Accordingly, Applicant respectfully submits that Simon and US 214, considered either alone or in combination, do not teach or suggest the claimed invention, reciting HFCS 42 in combination with 0.015 to 0.035 wt.% of acesulfame K alone.

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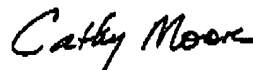
Applicant thus respectfully submits that the claimed invention is patentable in light of Simon and US 214, considered either alone or in combination.

### **CONCLUSION**

It is respectfully submitted that Applicants have made a significant and important contribution to the art, which is neither disclosed nor suggested in the art. It is believed that all of pending Claims 1 and 7 through 10 are now in condition for immediate allowance. It is requested that the Examiner telephone the undersigned if any questions remain to expedite examination of this application.

It is not believed that extensions of time or fees are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time and/or fees are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required is hereby authorized to be charged to Deposit Account No. 50-2193.

Respectfully submitted,



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### **CERTIFICATE OF FACSIMILE TRANSMISSION**

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Claire Wygand